

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



February 28, 2006

VIA HAND DELIVERY & ELECTRONIC MAIL

The Honorable John Bohn
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

**Re: Proposed Order Instituting Investigation of
San Gabriel Valley Water Company, A.02-11-044/A.05-08-021**

Dear Commissioner Bohn:

The Division of the Office of Ratepayer Advocates ("DRA") writes in response to San Gabriel Valley Water Company's ("San Gabriel") letter of February 21, 2006 advocating that the Commission not issue the proposed Order Instituting Investigation ("OII") of San Gabriel.

DRA strongly supports the issuance of the OII for the following reasons: 1) issuing OIIs in conjunction with rate cases is a routine Commission procedure; 2) Administrative Law Judge ("ALJ") Barnett stated at the September 29, 2005 Pre-hearing Conference ("PHC") that if he felt an OII was warranted at a later date, he would propose one; 3) an OII will not cause delay in the current proceedings if only the current evidentiary record is utilized; and 4) an OII would allow San Gabriel's Los Angeles Division ratepayers to be included in this current proceeding.

First, the Commission routinely issues OIIs in conjunction with General Rate Cases ("GRCs"), particularly with the electric and telecommunication industries. *See* D.05-05-024; D.02-10-064; D.01-06-039; D.97-12-045; D.97-12-091.

The Water Rate Case Plan, D.04-06-018, also states OIIs should be issued in rate cases when necessary, particularly when the Commission utilizes its authority in furtherance of the public interest. *See* P. 24.

Secondly, ALJ Barnett did state at the September 29, 2005 PHC that at that time he did not feel an OII was warranted, but he further stated that he would recommend an OII at a later date if he felt it was necessary (PHC Tr. 49:21-28):

So as I said, at this point, I'm not going to recommend an OII. But of course, if the evidence comes out at some later point that all of these things have happened, the Commission can always open up an OII.

It doesn't have to open it on the first day of hearing. It can open it up on the last day of hearing. So if the evidence points to the requirement for an OII, then I would recommend one.

ALJ Barnett further stated (PHC Tr. 52:1-4 and 10-13):

If at some later point the evidence shows that the company had done all these nefarious things, and at that point if I'm persuaded, I'll recommend an OII.

And it's just that at this time, I'm not persuaded that an OII is necessary. If the evidence shows me at a later time that an OII is necessary, I will recommend an OII.

Thus, consistent with the above quote, after hearing the evidence in this proceeding ALJ Barnett has appropriately found that an OII is warranted in San Gabriel's current rate case proceeding. San Gabriel cannot properly claim surprise at this development in that ALJ Barnett's PHC comments left the very real possibility of a proposed OII for a later date.

Thirdly, San Gabriel states it is concerned about a proposed OII causing delay in the current proceedings if the Commission conducted further hearings and took new evidence. There would be no delay in the proceedings if the current evidentiary record is only utilized under the OII and the issue of penalties is addressed independently of addressing the current rate proceeding. Thus, the issuance of an OII can be instituted without delaying the current proceeding.

Lastly, DRA advocates that the Commission issue an OII so San Gabriel's Los Angeles Division ratepayers may be included in this proceeding. In Decision ("D") 04-07-034, the previous San Gabriel Fontana Division general rate case, the Commission ordered the Water Division to audit all of San Gabriel's sale and condemnation proceeds from 1996 to present, before the Fontana division's next general rate case. Although, D.04-07-034 pertained to the Fontana division, the audit encompassed San Gabriel's conduct with regard to both of its two divisions, Los Angeles and Fontana.

The audit uncovered serious instances of possible inappropriate conduct by San Gabriel concerning its use of Public Utilities Code Section 790 and non-Section 790 funds in paying dividends to its shareholders during the audit period. During the PHC on September 29, 2005, Jason Zeller, DRA counsel, asked ALJ Barnett to issue an OII to institute penalties against San Gabriel if warranted and to include San Gabriel's Los Angeles ratepayers in the proceeding. Mr. Zeller stated (PHC Tr. 54:1-6 and 11-16):

Well, your Honor, the rates that San Gabriel's customers in the Los Angeles district are currently paying are based on plant additions. Some of them that are in question currently by this audit report. So it seems to me their rates are going to be affected by the outcome.

Do you think it's important that the company give their customers notice that their rates may be affected by the outcome of this audit in the Los Angeles district? It seems to me that they should have an opportunity to participate if they feel--

Mr. Zeller expressed the need to issue an OII to allow the Los Angeles ratepayers to participate in the current proceeding.

The rates Los Angeles customers currently pay are partially based on plant additions, which was one of the primary subjects of the audit. Thus, San Gabriel's Los Angeles Division rates are likely to be affected by the outcome of the audit in this proceeding. If the Commission concludes certain plant additions are poorly justified or inappropriate or should have been paid for out of contamination proceeds, San Gabriel's Los Angeles Division's rates will have to be adjusted. The Commission's issuance of an OII would afford Los Angeles ratepayers notice of such adjustments.

DRA respectfully urges you to support the opening of an OII of San Gabriel Valley Water Company.

Sincerely,

/s/ Selina Shek

Selina Shek
Staff Counsel
Attorney for the Division of Ratepayer Advocates

SEL:ngs

cc: Hon. Michael Peevey, President
Hon. Geoffrey Brown, Commissioner
Hon. Dian Grueneich, Commissioner
Hon. Rachelle Chong, Commissioner
Hon. Robert A. Barnett, Administrative Law Judge
Robert Lane, Advisor to Commissioner Bohn
Service List - A.02-11-044/A.05-08-021